IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

R. C. Rev..No. 33 of 2007()

RCA.96/2002 of ADDL.DISTRICT COURT (ADHOC-II), THALASSERY
RCP.130/2000 of ADDL.MUNSIFF COURT, KANNUR
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REVISION PETITIONER/APPELLANT/RESPONDENT

M.V.KORAN, S/O.KUMBATHI,
AGED 70 YEARS, PROPRIETOR OF N.V.K.CYCLE WORKS,
NEAR RAILWAY STATION, KANNAPURAM,
KANNUR-670 301, POST CHERUKUNNU.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS: PETITIONER

SREEJA MANOHARAN, D/O.LATE
K.C.KANNAN, AGED 32 YEARS, RESIDING AT
K.C.HOUSE, KANNAPURAM (PO), CHERUKUNNU,
KANNUR.

BY /

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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R.C.R. NO. 33 OF 2007

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Dated this the 1st day of February 2007

ORDER

Udayabhanu,J

The Revision Petitioner/tenant is under orders of eviction as per the concurrent findings of the courts below under section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act. The landlord, a lady, who is a co-owner, has sought for vacant possession on the ground that she intended to start a business in fancy, stationery and embroidery items in the petition schedule premises wherein the revision petitioner/tenant is running a cycle repairing and sale of cycle spare parts business. It was found by both the courts below that the petitioner/landlord is not having any other engagement and her husband is in the Middle East and her brother is conducting a business near the petition schedule premises and hence the finance required to start the business etc. are at the command of the petitioner and there is nothing to dispute the bonafides of the need set up by the

petitioner/landlord. The ground raised before the appellate authority and herein is that PW1, the landlord had admitted that she is in possession of other premises and hence the 1st proviso to section 11(3) will be attracted. But it was held by the appellate authority that the contention based on the 1st proviso to section 11(3) of the Act was not properly raised and considered before the Rent Control Court. In fact, the judgment of the Rent Control Court is totally silent about the above contention raised before the appellate authority. The appellate authority also found that the PW1 has just stated that there are other buildings in which she has got right. It was noted that the above contention was not put to PW1 clearly. It is not seen suggested that any particular premises is in vacant possession. Moreover, the above was not a ground raised before the Rent Control Court . Had it been raised, the Rent Control Court would have considered the same. The appellate authority has noted that the statement that other buildings, wherein she has got right, are there, can also be with respect to her residential house. The tenant could have properly raised the above ground and pointed

out specifically that the premises which, according to him, is in vacant possession of the landlord had it been really vacant. Before the appellate authority also, no attempt was made in the above direction. Hence we find there is no substance in the above contention raised in the revision petition.

2. So far as the protection of the 2nd proviso to section 11 (3) of the Act is concerned, the landlord had taken out a commission and the commissioner was examined as well. It was found that other premises are available in the locality. On the other hand, the revision petitioner/tenant has not at all made any endeavour in this regard. Admittedly, the burden is on the tenant. Hence, we find that there is absolutely no ground to interfere in the concurrent findings of the courts below as to the protection claimed under the second proviso to section 11(3) also. Hence we find that the revision petition is liable to be dismissed in limine.

3. The plea of the counsel for the revision petitioner/tenant that he may be granted 1 year time to vacate the premises appears to be too long as the proceedings have commenced as

early as 2000. We are inclined to grant 4 months time from today onwards to vacate the premises on condition that he shall remit the entire rental arrears, if any, and continue to remit the rent due in future and also file an affidavit before the Execution Court within 20 days from today undertaking to vacate the premises on or before 01.06.2007.

In the result, the revision petition is dismissed with the above directions.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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